

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. C-07-05944 JST

**ORDER GRANTING MOTION TO
DISSEMINATE NOTICE OF DIRECT
PURCHASER CLASS CERTIFICATION**

This Order Relates To:

Crago, d/b/a Dash Computers, Inc., et al. v.
Mitsubishi Electric Corp., et al., Case No.
14-CV-2058 JST

Now before the Court is the Direct Purchaser Plaintiffs' ("DPPs") Motion to Disseminate Notice of Direct Purchaser Class Certification. ECF No. 3944 ("Mot."). The motion is fully briefed¹ and suitable for disposition without oral argument pursuant to Local Rule 7-1(b).² For the reasons set forth below, the DPPs' motion is GRANTED.

Fed. R. Civ. P. 23(c)(2)(B) provides that the Court "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Further, the notice must state the following in plain, concise, and easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who

¹ ECF Nos. 3980 ("Response"), 4014 ("Reply").

² The hearing for this motion was vacated on September 9, 2015. ECF No. 4045.

requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). A district court has wide discretion in fashioning a notice best calculated to reach the plaintiff class. See Reed v Health and Human Services, 774 F.2d 1270, 1277 (4th Cir. 1985); Rivera v. Patino, 524 F. Supp. 136, 150 (N.D. Cal. 1981).

On July 8, 2015, the Court certified this case as a class action against Mitsubishi, the only remaining defendant. See ECF No. 3902 ("Class Cert. Order"). The Court certified a class of DPPs pursuant to Rule 23(b)(3) defined as

All persons and entities who, between March 1, 1995 and November 25, 2007, directly purchased a CRT Product in the United States from any Defendant or any subsidiary or affiliate thereof, or any co-conspirator or any subsidiary or affiliate thereof. Excluded from the class are defendants, their parent companies, subsidiaries or affiliates, any co-conspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

Class Cert. Order at 6. In addition, the Court ordered the DPPs "to specifically identify 'affiliates' in the class definition (and class notice) to enable the parties and class members to better determine who is in the class." Id. at 15-16. The instant motion seeks an order approving the dissemination of notice to the above defined class while providing class members an opportunity to request exclusion. Specifically, the DPPs propose providing notice to the class by (1) directly mailing written notice to each class member whose name was provided by the Defendants, (2) publishing notice in two national newspapers, and (3) posting notice on the internet.

The DPPs present two forms of notice: a Long Form Notice and a Summary Notice. The DPPs propose that the Long Form Notice be given by mail to each class member who may, by reasonable efforts, be identified. In addition, the DPPs propose sending the Long Form Notice by email to any class member for which an email address has been obtained. The notice would be sent to the class two weeks after the entry of this Order. Class members would then have forty-five (45) days to request exclusion if desired. Separately, the DPPs propose publishing the Summary Notice in the national editions of the Wall Street Journal and the New York Times after the Long Form Notice has been sent to class members. Both notices, along with the settlement

1 agreement, will also be posted on a website.

2 The DPPs argue that the Court should grant their motion because the proposed notice
3 clearly and concisely explains the nature of the action, provides a clear description of who is a
4 member of the class and the binding effects of class membership, explains how to exclude oneself
5 from the class, explains how to obtain copies of papers filed in the case, explains how to contact
6 class counsel, informs class members that they may hire their own attorney, and explains how to
7 obtain more information about the case.

8 Mitsubishi does not object to the proposed manner of notice or to the majority of its
9 content. Mitsubishi argues in its response, however, that (1) notice should be deferred until
10 mediation is complete, and (2) the affiliates and subsidiaries section of the notice should be
11 modified to exclude entities that have not been proven to be owned or controlled by any of the
12 alleged co-conspirators.³ As mediation is now complete, Mitsubishi's first concern is moot. See
13 ECF No. 4161. As to Mitsubishi's objection to the affiliates and subsidiaries section of the notice,
14 the Court finds Mitsubishi's argument unconvincing.

15 In its Order on Class Certification, the Court directed the DPPs to include in their proposed
16 notice a list of alleged co-conspirator affiliates and subsidiaries. See Class Cert. Order at 15-16.
17 Mitsubishi argues that before a particular entity can be included on that list, the DPPs must
18 provide evidence establishing that the entity is an affiliate or subsidiary. The Court disagrees.
19 The merits of the DPPs' allegations are irrelevant on a motion to disseminate notice. Indeed, the
20 point of a notice to class members is, in part, to inform them about the nature of the allegations
21 being asserted on their behalf, including, in this case, the identity of alleged co-conspirator
22 affiliates and subsidiaries. In their Second Amended Complaint, the DPPs allege that NEC-
23 Mitsubishi Electric Visual Systems Corporation, NEC-Mitsubishi Electronics Display of America,
24 Inc., and NM Visual Systems de Mexico S.A. de C.V., among others, are affiliates or subsidiaries
25 of the co-conspirator defendants. See ECF No. 4007 ¶ 92 n.1. Accordingly, they were included in
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27 ³ Specifically, Mitsubishi asks the Court to strike NEC-Mitsubishi Electric Visual Systems
28 Corporation, NEC-Mitsubishi Electronics Display of America, Inc., and NM Visual Systems de
Mexico S.A. de C.V. from the affiliates and subsidiaries section of the proposed notice.

1 the DPPs' proposed notice to class members pursuant to the Court's Order on Class Certification.
2 Mitsubishi's objection is therefore without merit.

3 The Court also approves all other aspects of the proposed Long Form Notice and Summary
4 Notice. Further, the Court finds that taken together, mailing of the Long-Form Notice (U.S. Mail
5 or electronic mail), publication of the Summary Notice, and internet posting of the Long-Form
6 Notice are: (1) the best notice practicable; (2) reasonably calculated, under the circumstances, to
7 apprise class members of the certification of this matter and of their right to exclude themselves;
8 (3) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive
9 notice; and (4) meet all applicable requirements of due process and any other applicable
10 requirements under federal law.

11 Plaintiffs' claims administrator shall provide notice of the class certification to class
12 members. The claims administrator shall provide direct notice of class certification to all
13 members of the class on or before a date set fourteen (14) days from the entry of this Order. Such
14 notice shall be sent either by first class U.S. mail postage prepaid or by electronic mail. The
15 claims administrator shall publish the Summary Notice in the national editions of the Wall Street
16 Journal and New York Times on or before a date set eighteen (18) days from the entry of this
17 Order. The claims administrator shall also cause a copy of the class notices and the Court's Order
18 on Class Certification to be posted on the website
19 www.CRTDirectPurchaserAntitrustSettlement.com. In addition, on or before a date set fourteen
20 (14) days from the entry of this Order, the claims administrator shall cause the "Frequently Asked
21 Questions" and "Dates to Remember" pages of the website to be updated with all deadlines
22 contained in this Order.

23 Each class member shall have the right to be excluded from the class by mailing a request
24 for exclusion to the claims administrator no later than a date set, at least forty-five (45) days after
25 mailing of the direct notice. Requests for exclusion must be in writing and set forth the name and
26 address of the person or entity who wishes to be excluded, as well as all trade names or business
27 names and addresses used by such person or entity, and must be signed by the class member
28 seeking exclusion. No later than fourteen (14) days after the date set for exclusions, lead counsel

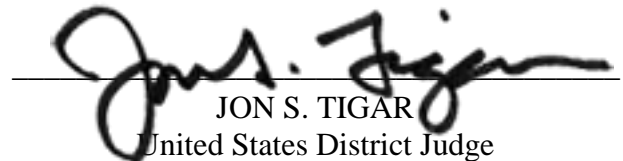
1 shall file with the Court a list of all persons or entities who have timely requested exclusion from
2 the Class. Defendants retain all of their legal rights to assert any defense, including lack of federal
3 antitrust standing, against any class member who has opted out of the class.

4 Any class member who does not properly and timely request exclusion from the Class as
5 provided above shall be bound by the District Court's rulings in the lawsuit, including any final
6 judgment.

7 For the forgoing reasons, the DPPs' Motion to Disseminate Notice of Direct Purchaser
8 Class Certification is GRANTED.

9 **IT IS SO ORDERED.**

10 Dated: November 9, 2015

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12 JON S. TIGAR
13 United States District Judge
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United States District Court
Northern District of California